

# **Exhibit 4**

**COURT REPORTERS**  
**OF AKRON CANTON AND CLEVELAND**

Transcript of the Testimony of  
**Todd Rhett Hawkins**

**Taken On:** August 20, 2008

**Case Number:** 2:06-CV-2141-DGC

**Case:** Soilworks, LLC, vs. Midwest Industrial Supply, Inc.,

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<p style="text-align: right;">122</p> <p>1 A. Personally, no.</p> <p>2 Q. Do you know if anyone else at Midwest</p> <p>3 Industrial Supply ever did?</p> <p>4 A. I don't know.</p> <p>5 Q. So if I can just kind of go back and</p> <p>6 summarize a little bit with respect to</p> <p>7 Exhibit 23, in the first two pages, which</p> <p>8 constitutes essentially a letter to the Patent</p> <p>9 and Trademark Office, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that letter was written because it was</p> <p>12 the feeling of the applicant, in January of '05,</p> <p>13 or the belief of the applicant in January of</p> <p>14 '05, that there was an infringing device or</p> <p>15 product actually on the market, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that one of those products was the</p> <p>18 Soilworks Durasoil product?</p> <p>19 A. Yes.</p> <p>20 Q. For which no chemical testing or analysis</p> <p>21 had been done by you at that point, correct?</p> <p>22 A. I personally had not done any chemical</p> <p>23 analysis.</p> <p>24 Q. Are you aware of any that had been done?</p> <p>25 MR. SKERIOTIS: Objection, based</p>	<p style="text-align: right;">124</p> <p>1 Durasoil product?</p> <p>2 MR. SKERIOTIS: Same objection. I</p> <p>3 mean, if, in fact, some testing was done, it</p> <p>4 would be in anticipation of litigation. So to</p> <p>5 the degree that your objection is -- I mean, it</p> <p>6 clearly references "allegedly infringing</p> <p>7 product," and should Midwest have received the</p> <p>8 patent as these claims were drafted on page 3, I</p> <p>9 would assume litigation would be anticipated;</p> <p>10 and therefore, I would maintain the objection.</p> <p>11 And if, in fact, any of your response</p> <p>12 would be that any testing or not was done with</p> <p>13 an attorney present, then I instruct you not to</p> <p>14 answer that question, unless you have knowledge</p> <p>15 prior to any attorney being involved, of any</p> <p>16 testing done.</p> <p>17 THE WITNESS: I have no knowledge</p> <p>18 of any testing being done without the attorney</p> <p>19 being present.</p> <p>20 BY MR. DOSEK:</p> <p>21 Q. Do you have knowledge of testing being done</p> <p>22 with an attorney present?</p> <p>23 MR. SKERIOTIS: Objection.</p> <p>24 Instruct you not to answer. Same objection.</p> <p>25 MR. DOSEK: And you are</p>
<p style="text-align: right;">123</p> <p>1 upon -- same objection I lodged in the prior</p> <p>2 depositions, that with respect to any testing</p> <p>3 that's been done pursuant to an attorney or not,</p> <p>4 we maintain the attorney work product.</p> <p>5 If there was any testing done prior</p> <p>6 to any attorney being involved and prior to this</p> <p>7 litigation, you are free to answer that</p> <p>8 question.</p> <p>9 MR. DOSEK: I don't think there</p> <p>10 is any work product in January of '05, John.</p> <p>11 MR. SKERIOTIS: You didn't limit it</p> <p>12 to January '05.</p> <p>13 MR. DOSEK: Well, January '05</p> <p>14 is the time that this exhibit was prepared,</p> <p>15 Exhibit 23.</p> <p>16 THE WITNESS: I am thoroughly</p> <p>17 confused now.</p> <p>18 BY MR. DOSEK:</p> <p>19 Q. Okay.</p> <p>20 A. If you would re --</p> <p>21 Q. Fine, we will back up.</p> <p>22 As of January '05, are you aware of any</p> <p>23 chemical analysis or any other kind of analysis</p> <p>24 that had been performed by or on behalf of</p> <p>25 Midwest Industrial Supply with respect to the</p>	<p style="text-align: right;">125</p> <p>1 claiming that whether or not he knows whether</p> <p>2 there was any testing done by any lawyer is</p> <p>3 privileged?</p> <p>4 MR. SKERIOTIS: Yes. It's attorney</p> <p>5 work product, absolutely. Because then you</p> <p>6 would know whether or not any testing was done.</p> <p>7 And that whether or not any attorney did any</p> <p>8 testing on any product pursuant to this</p> <p>9 litigation in anticipation thereof is absolutely</p> <p>10 privileged.</p> <p>11 MR. DOSEK: And you're --</p> <p>12 MR. SKERIOTIS: And that's the same</p> <p>13 objection, Scott, I've noted in the Detloff</p> <p>14 deposition and the Vitale deposition as well,</p> <p>15 and I have never been questioned until today.</p> <p>16 So --</p> <p>17 MR. DOSEK: Well, just because</p> <p>18 you haven't been questioned doesn't mean that</p> <p>19 your objection is not ill founded, because it</p> <p>20 is, John, particularly when you are talking</p> <p>21 about something that is in the time frame of</p> <p>22 January of '05, a year and a half before any of</p> <p>23 the -- before the patent was issued, before any</p> <p>24 of this --</p> <p>25 MR. SKERIOTIS: Sure.</p>

<p style="text-align: right;">126</p> <p>1       <b>MR. DOSEK:</b>     -- controversy ever</p> <p>2    arose.</p> <p>3       <b>MR. SKERIOTIS:</b>  You are absolutely</p> <p>4    true.</p> <p>5       <b>MR. DOSEK:</b>     That is akin to an</p> <p>6    insurance company claiming work product whenever</p> <p>7    it drafts an insurance policy, because there may</p> <p>8    be litigation about the insurance policy.</p> <p>9       And, John, you know as well as I do</p> <p>10   that the attorney work product doctrine does not</p> <p>11   extend that far.</p> <p>12       <b>MR. SKERIOTIS:</b>  And I think we</p> <p>13   disagree with respect to patent cases,</p> <p>14   especially where you've got a document, Scott,</p> <p>15   that says that they believe that there is a</p> <p>16   product that is being infringed. How that's not</p> <p>17   in anticipation of litigation is beyond question</p> <p>18   to me.</p> <p>19       So I am maintaining the objection and</p> <p>20   you are welcome to disagree with it.</p> <p>21       <b>MR. DOSEK:</b>     All right. Just so</p> <p>22   I am clear then, you are saying that this, in</p> <p>23   January of '05, constitutes something that is in</p> <p>24   anticipation of litigation, even though you</p> <p>25   filed, in your motion to dismiss this lawsuit,</p>	<p style="text-align: right;">128</p> <p>1    knows whether any such testing has been done is</p> <p>2    privileged and work product?</p> <p>3       <b>MR. SKERIOTIS:</b>  If an attorney was</p> <p>4    present, correct. You can ask him that</p> <p>5    question, if an attorney wasn't present, if it</p> <p>6    was done, yeah. That's exactly what I am</p> <p>7    saying.</p> <p>8    <b>BY MR. DOSEK:</b></p> <p>9    <b>Q.</b> The question was, are you aware of any</p> <p>10   testing that's been done, chemical testing of</p> <p>11   the Durasoil product, by anybody?</p> <p>12       <b>MR. SKERIOTIS:</b>  Same objection.</p> <p>13       <b>THE WITNESS:</b>   Same answer. Not</p> <p>14   without the attorney present.</p> <p>15   <b>BY MR. DOSEK:</b></p> <p>16   <b>Q.</b> So you are aware of testing of the Durasoil</p> <p>17   product that was done under the supervision of</p> <p>18   lawyers; is that correct?</p> <p>19       <b>MR. SKERIOTIS:</b>  Objection. Again,</p> <p>20   he already asked and answered this question</p> <p>21   already. So, I mean, to the degree you got your</p> <p>22   answer, you got your answer. Let's move on.</p> <p>23   You are just asking the same question a</p> <p>24   different way.</p> <p>25</p>
<p style="text-align: right;">127</p> <p>1    an argument that your letters to Polar Supply in</p> <p>2    the summer of '06 did not constitute threats of</p> <p>3    litigation, is that what you are saying?</p> <p>4       <b>MR. SKERIOTIS:</b>  That's exactly what</p> <p>5    I am saying, with one caveat.</p> <p>6       <b>MR. DOSEK:</b>     Okay.</p> <p>7       <b>MR. SKERIOTIS:</b>  If you would take a</p> <p>8    look, Scott, at page 3, the claim at issue is "A</p> <p>9    compound for chemical soil stabilization and</p> <p>10   dust control, the compound comprising: a</p> <p>11   synthetic isoalkane," period. If that claim</p> <p>12   were to have issued, that is exactly my</p> <p>13   position.</p> <p>14   <b>BY MR. DOSEK:</b></p> <p>15   <b>Q.</b> Are you aware of any chemical analysis or</p> <p>16   testing that has been done with respect to the</p> <p>17   Durasoil product?</p> <p>18       <b>MR. SKERIOTIS:</b>  Same objection.</p> <p>19   Other than if an attorney was working on it --</p> <p>20       <b>THE WITNESS:</b>   Same answer as I</p> <p>21   gave before.</p> <p>22       <b>MR. DOSEK:</b>     And you are saying,</p> <p>23   John, that whether he knows if any such testing</p> <p>24   has even been done -- I am not asking him for</p> <p>25   the results of any such testing -- whether he</p>	<p style="text-align: right;">129</p> <p>1    <b>BY MR. DOSEK:</b></p> <p>2    <b>Q.</b> You are not aware of any testing of the</p> <p>3    Durasoil product that's ever been done by the</p> <p>4    Corps of Engineers?</p> <p>5    <b>A.</b> Yes, I am aware of testing that was done to</p> <p>6    the Durasoil product through the Corps of</p> <p>7    Engineers. Chemical testing, no.</p> <p>8    <b>Q.</b> What kind of testing are you referring to?</p> <p>9    <b>A.</b> They were involved -- Durasoil was a</p> <p>10   product that was tested at Yuma, Arizona the</p> <p>11   following year that -- my previous reference.</p> <p>12   <b>Q.</b> Is it fair to characterize that testing at</p> <p>13   Yuma as performance testing?</p> <p>14   <b>A.</b> Yes.</p> <p>15   <b>Q.</b> As opposed to chemical analysis?</p> <p>16   <b>A.</b> Yes.</p> <p>17       (Thereupon, Plaintiff's Exhibit 10 of</p> <p>18       the T.R. Hawkins deposition was</p> <p>19       marked for purposes of</p> <p>20       identification.)</p> <p>21       <b>THE WITNESS:</b>   Can I take a</p> <p>22   lavatory break here real quick?</p> <p>23       <b>MR. DOSEK:</b>     You bet. You bet.</p> <p>24       <b>THE VIDEOGRAPHER:</b> We're off the</p> <p>25   record.</p>